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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Lieberman & Brandsdorfer, LLC 802 Still Creek Lane Gaithersburg, MD 20878			EXAMINER PHAM, HUNG Q	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/734,864	<b>Applicant(s)</b> RHODES, JAMES J.	
	<b>Examiner</b> HUNG Q. PHAM	<b>Art Unit</b> 2169	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/03/08 has been entered.

### ***Response to Arguments***

#### **Claim Objections**

The objection to the claims has been withdrawn due to the amendment.

#### **Claim Rejections - 35 USC § 103**

Applicant's arguments with respect to the rejection under 35 U.S.C. § 103 have been fully considered but they are not persuasive.

As argued by applicant:

*The invention of Applicants pertains to backing up computer files without the need for additional hardware or software. Applicants employ a central manager to dynamically manage backups. None of Second Copy, Knight, or Whiting et al. teach the limitation pertaining to a central system coupled to each server and client. As reflected in the amended claims, the central system of Applicants is responsible for installing daemon applications on systems with available disk space and backup applications on systems whose files require backup. See paragraphs 0020, 0021, and 0029 of Applicants. By creating a central file, the central system dynamically coordinates the functions of backing up and restoring files.*

The examiner respectfully disagrees.

Art Unit: 2169

The USPTO system is *a central system coupled to systems including each server and client on a network*, e.g., the USPTO main server for administrators coupled to the Internet server, mail server, backup server... and a plurality of examiner client computers on the Internet.

The Knight system is also *a central system coupled to systems including each server and client on a network*, e.g., the administration server coupled to the Internet server, mail server, backup server... and a plurality of client computers on the Internet (Knight, Col. 3 Lines 36-67).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5, 8-12 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over a conventional network of computers running Window XP operating system and SECOND COPY 2000 in view of Knight [USP 7,043,619].**

Regarding claims 1 and 8, to perform backup operation for a conventional network, USPTO computer clients run Window XP operating system and SECOND COPY 2000. By running the Window XP operating system, the Window XP

*creating a master file by the central system, wherein said master file comprises information regarding a list of system available to store backup files and an amount of available disk space to store backup files for each system available to store backup files* (As shown at Screenshot 1 of the Appendix, a layout of storage configuration as *a master file*, which is created by *the central system*, e.g., the USPTO main server,

Art Unit: 2169

wherein the layout comprises *information regarding a list of system available to store backup files*, e.g., “HPham5 on “cfs0...”, and *an amount of available disk space to store backup files for each system available to store backup files*, e.g., 8.37 GB).

The network of USPTO computers further

*the central system installing a backup application on systems to perform a backup operation* (the network of USPTO computers are installed SECOND COPY 2000 as *backup application to perform a backup operation by the central system*);

*receiving a request from said backup application to download said master file* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, SECOND COPY 2000 requests the layout storage configuration by selecting “Browse”);

*selecting from the master file at least one system available to store backup files* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, “HPham5 on “cfs0...” is selected for storing backup files); and

*performing the backup operation to backup at least one file on the at least one selected system* (The backup operation is performed as illustrated on page 8 of SECOND COPY 2000).

The missing of the backup process of network of USPTO computers running Window XP operating system and SECOND COPY 2000 is the claimed limitations *dynamically installing a daemon application by a central system coupled to systems with available disk space to store backup files, said systems including each server and client on a network and receiving a first metadata by the central, system from said installed daemon application, wherein said first metadata comprises information regarding available disk space.*

Knight teaches a method and program for determining storage configuration (Knight, Abstract). The method and program as disclosed by Knight comprising the steps of:

*dynamically installing a daemon application by a central system coupled to systems with available disk space to store backup files, said systems including each server and client on a network* (Storage Configurator

Art Unit: 2169

Software Program as *a daemon application* is installed on servers and clients with hard drive *available disk space to store backup files by central system*, e.g., administration server (Col. 4 Lines 21-46 and Col. 3 Lines 55-67));

*receiving a first metadata from said installed daemon applications, wherein said first metadata comprises information regarding available disk space* (Col. 7 Lines 64-67).

The Storage Configurator Software Program as taught by Knight is a must for the network of USPTO computers running Window XP operating system and SECOND COPY 2000. By using Storage Configurator Software Program, the configuration of storage devices is determined for creating the layout of storage configuration.

Regarding claim 15, a conventional network storage system, e.g., the USPTO network storage system, comprising:

*a processor* (A CPU is an inherited feature of the USPTO computer); and

*storage coupled to said processor* (A memory coupled to the CPU is an inherited feature of the USPTO computer).

To perform backup operation for the network storage system, the USPTO computer client runs Window XP as *a computer program*, wherein the XP comprises *instructions embedded in the memory and executable by the CPU*, said instruction comprising instruction for:

*creating a master file, wherein said master file comprises information regarding a list of system available to store backup files and an amount of available disk space to store backup files for each system available to store backup files* (As shown at Screenshot of the Appendix, a layout of storage configuration as *a master file*, wherein the layout comprises *information regarding a list of system available to store backup files*, e.g., “HPham5 on “cfs0...”, and *an amount of available disk space to store backup files for each system available to store backup files*, e.g., 8.37 GB).

The USPTO network storage system further

Art Unit: 2169

*installing a backup application on systems to perform a backup operation* (the network of USPTO computers are installed SECOND COPY 2000 as *backup application to perform a backup operation*);

*receiving a request from said backup application to download said master file* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, SECOND COPY 2000 requests the layout storage configuration by selecting "Browse");

*selecting from the master file at least one system available to store backup files* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, "HPham5 on "cfs0..." is selected for storing backup files); and

*performing the backup operation to backup at least one file on the at least one selected system* (The backup operation is performed as illustrated on page 8 of SECOND COPY 2000).

The missing of the backup process of USPTO network storage system is the claimed limitations *dynamically installing a daemon application by a central system coupled to systems with available disk space to store backup files, said systems including each server and client on a network and receiving a first metadata from said installed daemon application, wherein said first metadata comprises information regarding available disk space.*

Knight teaches a method and program for determining storage configuration (Knight, Abstract). The method and program as disclosed by Knight comprising the steps of:

*dynamically installing a daemon application by a central system coupled to systems with available disk space to store backup files, said systems including each server and client on a network* (Storage Configurator Software Program as *a daemon application* is installed on servers and clients with hard drive *available disk space to store backup files by central system*, e.g., administration server (Col. 4 Lines 21-46 and Col. 3 Lines 55-67));

*receiving a first metadata from said installed daemon applications, wherein said first metadata comprises information regarding available disk space* (Knight, Col. 7 Lines 64-67).

Art Unit: 2169

The Storage Configurator Software Program as taught by Knight is a must for the USPTO network storage system. By using Storage Configurator Software Program, the configuration of storage devices is determined for creating the layout of storage configuration.

Regarding claim 16, a conventional network storage system, e.g., the USPTO network storage system, comprising:

*a central system* (The USPTO server);

*a first computer system coupled to said central system* (e.g., the computer system of the examiner), said first computer system comprising:

*a first processor* (A CPU is an inherited feature of the USPTO computer); and

*a first memory unit coupled to said first processor* (A memory coupled to the CPU is an inherited feature of the USPTO computer),

*wherein said first memory unit is operable for storing a backup application operation*

*operable for backing up files* (To perform backup operation for the network storage system, the USPTO computer runs SECOND COPY 2000 for *backing up files*);

*a second and third computer system, both couple to said central system* (As shown in the Appendix, "HPham5 on "cfs0..." and "patents2700 on 'n..." as *a second and third computer system*) *wherein each of said second and said third computer system comprises:*

*a daemon application operable for communicating with a said central system* (The application for communicating with the server is an inherited feature of the network storages "HPham5 on "cfs0..." and "patents2700 on 'n..."); and

*a disk unit, wherein an available capacity of said disk unit is configured to store back-up files* (e.g., "HPham5 on "cfs0..." has "Total size" and "Free Space"); and

*wherein said central system comprises:*



Art Unit: 2169

*a computer program for installing said backup application on said first computer system for backup and restoration of files* (The SECOND COPY 2000 is installed on the USPTO computer by the USPTO server); wherein

*said computer program comprises instructions executable by a central system processor and embedded in storage accessible to said central system processor, wherein the instructions comprise instructions for:*

*creating a master file, wherein said master file comprises information regarding a list of system available to store backup files and an amount of available disk space to store backup files for each system available to store backup files* (As shown at Screenshot of the Appendix, a layout of storage configuration as *a master file*, wherein the layout comprises *information regarding a list of system available to store backup files*, e.g., “HPham5 on “cfs0...”, and *an amount of available disk space to store backup files for each system available to store backup files*, e.g., 8.37 GB);

*installing a backup application on said first computer system to perform a backup operation* (the USPTO computer is installed SECOND COPY 2000 as *backup application to perform a backup operation*);

*transferring a copy of said master file to said first computer system responsive to receiving a request from said backup applications to download said master file* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, SECOND COPY 2000 requests the layout storage configuration by selecting “Browse”);

*selecting from the master file at least one system available to store backup files* (As shown at screenshot 3 (Page 13) of SECOND COPY 2000, “HPham5 on “cfs0...” is selected for storing backup files); and

*performing the backup operation to backup at least one file on the at least one selected system* (The backup operation is performed as illustrated on page 8 of SECOND COPY 2000).

The missing of the backup process of USPTO network storage system is the claimed limitations *dynamically installing a daemon application on said second and third computer systems* and

Art Unit: 2169

*receiving a first metadata from said installed daemon applications, wherein said first metadata comprises information regarding available disk space on said second and said third computer systems.*

Knight teaches a method and program for determining storage configuration (Knight, Abstract). The method and program as disclosed by Knight comprising the steps of:

*dynamically installing a daemon application on said second and third computer systems* (Storage Configurator Software Program as *a daemon application* is installed on client computer systems with hard drive (Knight, Col. 4 Lines 21-46);

*receiving a first metadata from said installed daemon applications, wherein said first metadata comprises information regarding available disk space on said second and said third computer system* (Knight, Col. 7 Lines 64-67).

The Storage Configurator Software Program as taught by Knight is a must for the USPTO network storage system. By using Storage Configurator Software Program, the configuration of storage devices is determined for creating the layout of storage configuration.

Regarding claims 2, 9 and 17, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight, in combination, teach all of the claimed subject matter as discussed above with respect to claims 1 and 8, the SECOND COPY 2000 further includes the features of *receiving a list of files to be backed up*; and *selecting two or more systems from said master file* (The SECOND COPY 2000, Pages 12-13, Screenshots 2-3, "Browse" button).

Regarding claims 3, 10 and 18, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight, in combination, teach all of the claimed subject matter as discussed above with respect to claims 2, 9 and 17, the SECOND COPY 2000 further includes the features of *compressing and encrypting backup data* and *storing a*

Art Unit: 2169

*second metadata and a key* (By selecting "Custom Setup" as in Screenshot 1, backup data is compressed and encrypted as in Screenshot 7, and storing a second metadata, e.g., Destination Folder as in screenshot 4, and a key, e.g., password as in screenshot 7).

Regarding claims 4, 11 and 19, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight, in combination, teach all of the claimed subject matter as discussed above with respect to claims 3, 10 and 18, the SECOND COPY 2000 further includes the features of *second metadata comprises systems storing said backup data* (Screenshot 4).

Regarding claims 5, 12 and 20, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight, in combination, teach all of the claimed subject matter as discussed above with respect to claims 4, 11 and 19, and the feature of *transmitting said second metadata and said key to a central system* is an inherited feature of the SECOND COPY 2000 (the further includes the features because the USPTO server as *a central system* will receive the second metadata and key).

**Claims 6, 7, 13, 14, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over a conventional network of computers running Window XP operating system and SECOND COPY 2000 and Knight [USP 7,043,619] and further in view of Whiting et al. [USP 5,778,395].**

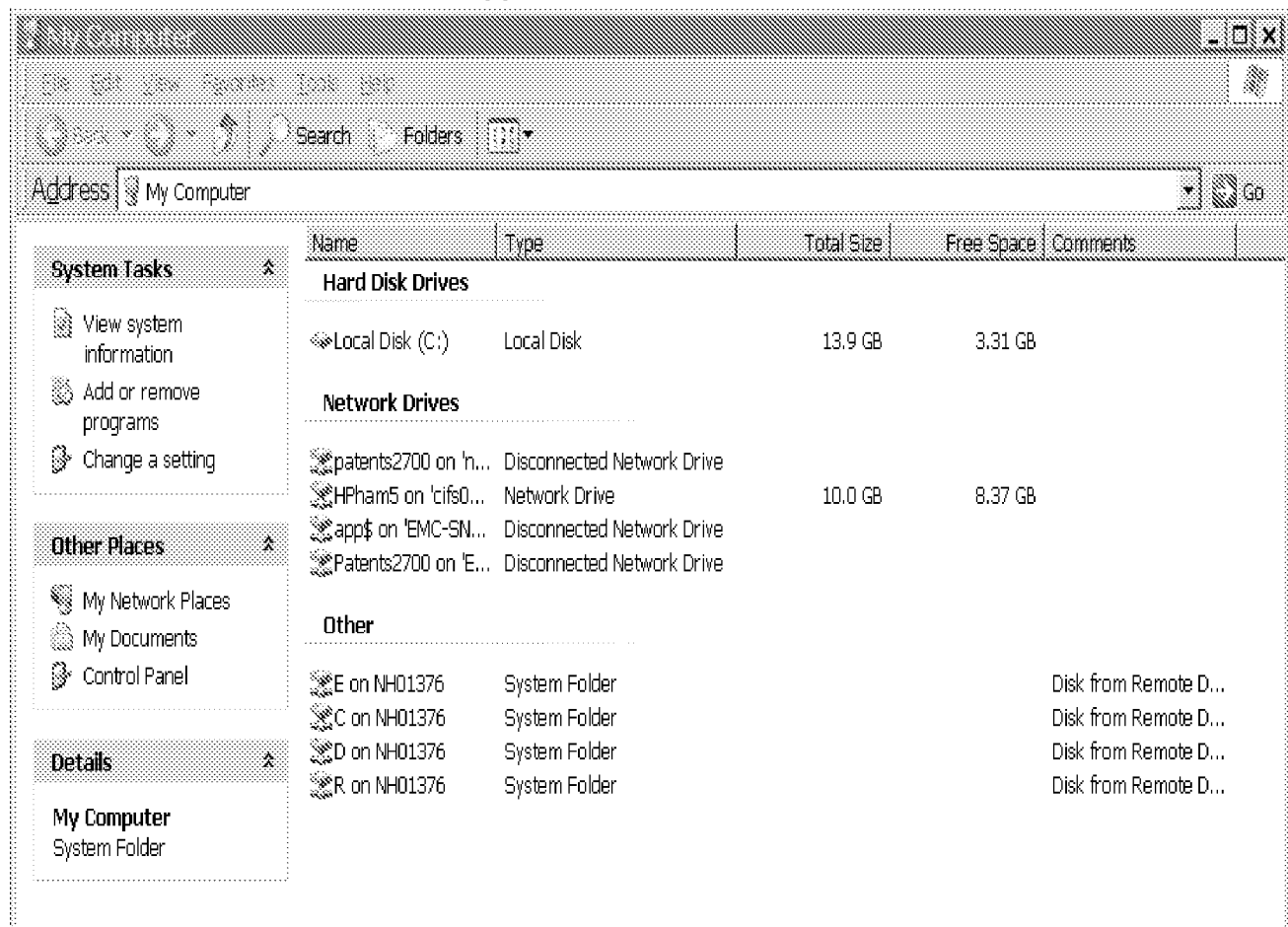
Regarding claims 6, 13 and 21, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight, in combination, teach all of the

Art Unit: 2169

claimed subject matter as discussed above with respect to claims 4, 11 and 19, but fail to teach the steps of *receiving a list of files to be restored; determining which systems store said files to be restored using said second metadata; and connecting to one or more daemon applications on one or more systems storing said files to be restored*. As disclosed by Whiting, the files could be restored by *receiving a list of files to be restored; determining which systems store said files to be restored using said second metadata; and connecting to one or more daemon applications on one or more systems storing said files to be restored* (Whiting, Col. 14 Lines 26-65). It would have been obvious for one of ordinary skill in the art at the time the invention was made to include the step of restoring files as taught by Whiting for recovering backup files.

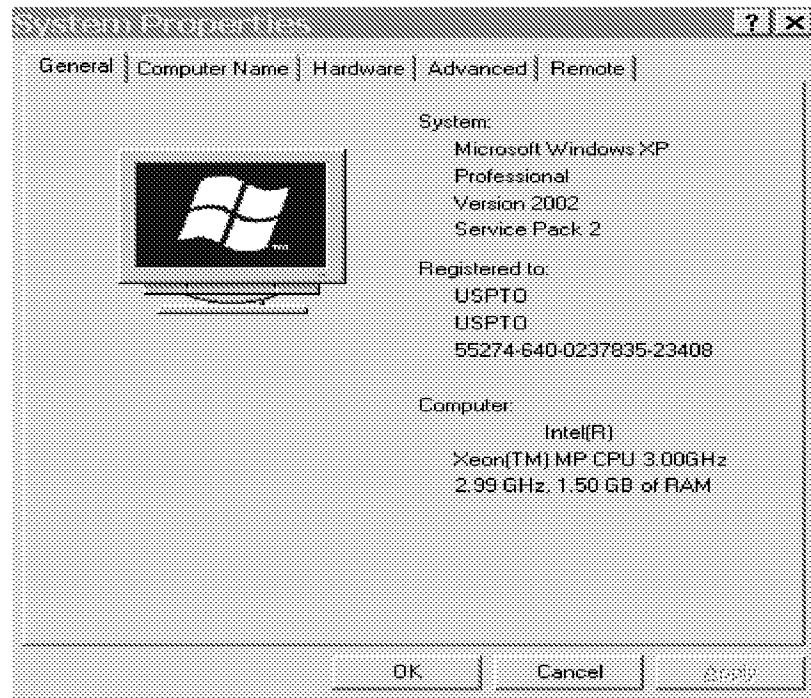
Regarding claims 7, 14 and 22, the network of USPTO computers running Window XP operating system and SECOND COPY 2000 and Knight and Whiting, in combination, teach all of the claimed subject matter as discussed above with respect to claims 6, 13 and 21, Whiting further discloses the steps of *receiving said files to be restored from said one or more daemon applications; uncompressing and decrypting said files to be restored using said key; and restoring said files to be restored* (Whiting, Col. 14 Lines 26-65).

Art Unit: 2169

**Appendix**

Screenshot 1

Art Unit: 2169



Screenshot 2

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES K. TRUJILLO can be reached on 571-272-3677. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

Art Unit: 2169

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUNG Q. PHAM/  
Primary Examiner  
Art Unit 2169

October 06, 2008